



Fair Dealing

The Copyright, Designs and Patents Act 1988 includes certain provisions regarding “fair dealing”, which are certain uses of copyright works that do not require the permission of the copyright owner nor infringe the copyright in the original work.

These uses are:

- (a) Fair dealing for the purposes of research or private study;
- (b) Fair dealing for the purposes of criticism or review, whether of the work itself or of another work or performance, provided it is accompanied by sufficient acknowledgement;
- (c) Fair dealing for the purposes of reporting a current event, provided it is accompanied by sufficient acknowledgement unless the work is used in a broadcast. This exemption does not apply to photographs.

To qualify for exemption under these provisions the reproductions and the manner in which they are made must meet certain criteria but the general point is that the dealing with the work in such circumstances must be fair. Fairness can be assessed only in the context of the relevant circumstances, but the quality and quantity of any work taken will be relevant. The use of the work may be seen as less fair if it has not previously been published. It must be fair use when judged in relation to the relevant purpose, so for example it would not be fair if the dealing competes with the normal exploitation of the work.

Further specific points are as follows;

For research or private study

Although this is not restricted to formal educational use, it must be for genuine research or private study. Making multiple copies or subsequent use of those copies as a general educational resource would not be seen as fair. Generally any copying of the work for these purposes must be undertaken by the person carrying out the research or study although other people are allowed to make a single copy on their behalf, however there are only limited circumstances in which this is seen to be fair.

Librarians cannot make such copies unless the artistic works are accompanying text or part of an article in another publication which they are entitled to reproduce under different, and strictly limited conditions. If anyone else makes the copies then it is expressly not fair if such a person knows that copies may be provided to more than one person at substantially the same time for substantially the same purpose.

For criticism or review:

A work may obviously be reproduced in a review or criticism of the work itself. For example, a review could be about an author's new work, but refer back to previous work, an image of which may be reproduced. Further, a review could include a comparison of two or more authors' works, any images of which may be fairly reproduced.

It is necessary that there be a link between the work reproduced and the subject matter of the review though this can include the thought underlying the work, an idea or philosophy suggested or illustrated by the work or some similar link (see Fact Sheet 4 for further details).

The reproduction must also be accompanied by “sufficient acknowledgement” which is defined as an acknowledgement identifying the work reproduced by title or other description and the name of the artist. If an acknowledgement is not given even though the image may genuinely accompany a review or critique, the fair dealing exemption will not apply.

Reporting current events:

The matters reported must be current, not matters of history, even if those historical events are “in fashion” or of interest at present. However, the work reproduced does not need to be “current” provided it accompanies an event which is properly current. This may be assessed by considering whether it is necessary to refer to the work to deal with the events in question. Also the reproduction must be used in reporting the events and not for editorial or other purposes, and must be accompanied by “sufficient acknowledgement”, unless it is used in a broadcast. Please note that photographs are specifically excluded from this provision.

Incidental inclusion:

Although not strictly a “fair use” provision, there is a further exemption from copyright protection of a work where it is incidentally included in another artistic work, a sound recording, film broadcast or cable transmission. The inclusion of the work, however, must be incidental. It cannot appear as a significant part of the other work and will not be incidental if it has been deliberately placed for its visual impact such as part of a film set.

There are further exemptions to copyright infringement (see Fact Sheet 25).

The content of this fact sheet is of benefit interest only and is not an exhaustive explanation of copyright protection and remedies for infringement. This fact sheet is not intended to apply to specific circumstances. The contents of this fact sheet should not therefore be regarded as constituting legal or other advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific and specialist advice.